IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8663 OF 2003

Shri Balaso Bapu Desai,
Age 38 years, Occ. Nil,
R/o.1210, Abitkar Galli, Gargoti,
Tal.Bhudargad, Dist.Kolhapur. .. Petitioner

v/s.

1. The State of Maharashtra,
Through the Secretary,
General Administration Department,
Having office at Mantralaya,
Mumbai 400 032.

2. The District Collector,
Kolhapur.

3. The Chief Executive Officer,
Kolhapur Zilla Parishad,
Kolhapur.

4. The Divisional Commissioner,
Pune Division, Pune. .. Respondents

Mr.N.V.Bandiwadekar for petitioner.

Mr.R.D.Rane, A.G.P. for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 9th September, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard.

2. Shri Bapu Bala Desai, since deceased, according to the petitioner, was a freedom fighter having been conferred Sanman Patra, Sanman Padak and Tamra Patra. He was also sanctioned monthly pension by the Government of Maharashtra for being a freedom fighter. The petitioner is his son. On the basis of the affidavit dated 3rd September, 1985 of Shri Bapu Bala Desai and the nomination, as per the

Government circular dated 12th October, 1965 Government of Maharashtra conferring certain benefits including preference in public employment for the freedom fighter or any relative to be nominated by him and dependent upon him, the petitioner was appointed temporarily as driver vide appointment order dated 24th October, 1985 in Kolhapur Zilla Parishad. He appears to have been in continuous service since then though there is no specific order appointing the petitioner as permanent employee. The respondent No.3 viz. the Chief Executive Officer, Kolhapur Zilla Parishad issued notice dated 8.11.1994 informing the petitioner that he had obtained employment in Zilla Parishad by submitting false and bogus certificate and was asked to remain present in the office of the Chief Executive Officer on 5.12.1994 alongwith the freedom fighter Shri Bapu Bala Desai with his original Sanman Patra, Tamra Patra, Pension Order together with necessary material produced by the petitioner at the time of employment to prove that he was the son of Shri Bapu Bala Desai. The petitioner did not appear as per that notice. It is petitioner's case that the said notice was not received by him. Another notice was issued to the petitioner on 5.12.1994. By the subsequent notice dated 14.3.1995, the petitioner was called upon to remain present on 6.4.1995 alongwith the necessary documents and information and produce proper written and oral evidence pursuant to the show-cause notice dated 8.11.1994. The petitioner's father Shri Bapu Bala Desai is said to

have died on 21.04.2004. The petitioner took his mother before the respondent No.3 on 6.4.1995 and he is said to have produced necessary documents in proof of the fact that he was the son of Shri Bapu Bala Desai and that the petitioner's father was a freedom fighter and the nomination in favour of the petitioner was genuine and correct. It is the petitioner's case that after he met respondent No.3 on 6.4.1995, no further communication was received immediately but thereafter surprisingly vide order dated 13th June, 1997, the petitioner's services came to be terminated and he was relieved from service with effect from that date. It is petitioner's case that he made representations to the concerned authorities including the Divisional Commissioner from time to time. By the communication dated 18th February, 2003, the Divisional Commissioner, Pune Division, Pune directed the Chief Executive Officer, Kolhapur Zilla Parishad to consider the petitioner's representations sympathetically and take immediate action. However, the petitioner's grievance was not redressed. The petitioner has, thus, approached this court challenging the termination order dated 13th June, 1997.

3. The respondent No.3 has filed reply affidavit. In the said reply affidavit, it is stated that service of the petitioner came to be terminated because Shri Bapu Bala Desai had already nominated his son-in-law Shri Anandrao Krishnarao Wable under the employment of freedom fighters in Government

service scheme and the said Shri Anandrao Krishnarao Wable, son-in-law of Shri Bapu Bala Desai was appointed and continues to be in service. It is, thus, submitted in the reply affidavit that the nomination of the petitioner by Shri Bapu Bala Desai was second nomination which was not permissible under the said scheme.

4. The order of termination translated in English annexed as Exhibit 'G' to the writ petition reads thus-

"O.W.No.PHC/Estt/WS/Reliev/97
Primary Health Centre,
Tudiye,

Dated: 13.6.1997

Read:(1) ZP-Estt-1-2049-85-11 dated 24.10.85.
(2) Order No.Legal Cell/WS/-224-97 dated 12.6.97 by Chief Executive Officer, Zilla Parishad, Kolhapur.

O R D E R

Shri BALASAHEB BAPU DESAI, Driver had been given appointment in Zilla Parishad Services, in the post of Driver under the Scheme of appointments in Government Services to the heir of Freedom Fighter. However, Shri Balasaheb Bapu Desai has not produced any strong evidence that he is the son of Freedom Fighter and hence, vide reference at Srl.No.2 above, Shri Balasaheb Bapu Desai, Driver, Primary Health Centre, Tudiye, is terminated from services of the Zilla Parishad on 13.6.1997 after office hours and he is relieved from his post.

Sd/-
Medical Officer
Primary Health Centre,
Tudiye, Taluka Chandgad"

5. The aforesaid termination order admittedly, came to be issued pursuant to the show-cause notice dated 8.11.1994 given to the petitioner to produce

appropriate documentary evidence that he was the son of Bapu Bala Desai (freedom fighter). The learned A.G.P. tendered copy of the said notice for our perusal, English translation thereof reads thus-

"No.Legal Cell 488.94
Zilla Parishad, Kolhapur.

Kolhapur
Dated: 08.11.94

SHOW CAUSE NOTICE

Shri Balasaheb Bapu Desai,
Driver
M I Sub Dn No.5, Bhudargad

Sub: Obtaining employment in Zilla Parishad services as Nominee of Freedom Fighter by cheating
....
To take action as per Rules

By Government Resolution General Administration Dept. No.CNS-1085-4652 J dated 12.10.1965, it is laid down that employment should be given in Government service to the Freedom Fighter or a person dependent upon him. By Government Resolution of General Administration Department No.CNS-1084-CR-103/16-A dated 10.01.1985, definition is prescribed about the persons who can be nominated by the Freedom Fighters. Similarly by Government Resolution GAD No.CNS-1082-1699-CR-28-85-16A dated 22.11.1985, orders are issued that before making appointment, the No Objection Certificate should be obtained so that there will be no double nomination. In accordance with the said Government Resolution, you came to be appointed in.... post vide this Office Order No.G-Estt-1.2049.85 dated 24.10.1985.

At the time of said appointment, you have produced the letter of nomination/affidavit of the Freedom Fighter Shri Bapu Bala Desai, R/o Mhasve Bute the Freedom Fighter Shri Bapu Bala Desai has nominated more than one person. As per G.R.dated 22.11.1985, you have not registered the nomination letter with the District Collector and not obtained No Objection Certificate from him. Hence for this reason, the District Collector by his letter No.MH-Estt-Desk 1B-RR 649.94 dated

21.07.1994 has informed this Office to take legal action against you as per Rules. Therefore, the original appointment order given to you is rendered wrong and illegal. Similarly it is also seen that you have committed breach of the conditions of appointment mentioned in your appointment.

Therefore, you should remain present in the Office of the Undersigned on 05.12.1994 at 11.00 a.m. without fail, alongwith the Freedom Fighter Shri Bapu Bala Desai with his original Sanman Patra, Tamra Patra, Pension Order, together with the necessary written evidence regarding the Affidavit (Nomination letter) produced by you at the time of seeking employment with this Office as the son of Freedom fighter Shri Bapu Bala Desai. You should remain present and submit the appropriate written explanation or evidence. If you would not do so, it will be presumed that you have nothing to say and take note that further legal action will be taken.

Also take note that by this Show cause notice, you are being given proper, reasonable and full opportunity to produce appropriate written evidence that you are the son of the above referred Freedom fighter Shri Bapu Bala Desai.

O.C. is signed by
C.E.O. Sd/-

For Chief Executive Officer
Zilla Parishad, Kolhapur.

Recd Notice
Sd/-
Shri B B Desai
Driver, M I Dn 5
10.11.1994"

6. We may observe that though the petitioner in the writ petition averred that he did not receive any notice dated 8.11.1994, it transpires from the endorsement appearing on the said show-cause notice that notice was received by the petitioner on 10.11.1994.

7. Be that as it may, the fact remains that the petitioner was called upon to show cause that he was son of the freedom fighter Shri Bapu Bala Desai

while the reply affidavit of respondent No.3 suggests that the petitioner was terminated from service because he allegedly procured employment illegally under the scheme framed by the State Government regarding employment of freedom fighter in Government service. The termination order records that the petitioner could not produce strong evidence that he was the son of freedom fighter and therefore, his service came to be terminated with effect from 13th June, 1997 but the reply affidavit records entirely different reason for termination. It was not disputed by the learned AGP before us that the petitioner was the son of Shri Bapu Bala Desai. In that event, ground of termination as recorded in the order goes. As a matter of fact show cause notice was also given to the petitioner to prove by reliable material that he was son of Shri Bapu Bala Desai. Now in the reply affidavit entirely new case is suggested; that the petitioner procured the employment fraudulently for which no enquiry was made. The order of termination, therefore, cannot be sustained.

8. The learned counsel for the petitioner made the statement before us that the petitioner would not claim any back wages from the respondent No.3 if he is reinstated. We record and accept his statement.

9. We, accordingly, dispose of the rule by the following order:-

(i) The impugned order dated 13th June, 1997 (Exhibit "G") is quashed and set aside. Consequently the petitioner shall be entitled to reinstatement but without back wages.

(ii) The respondent No.3 shall be at liberty, however, to initiate fresh enquiry against the petitioner if the appointment was obtained by the petitioner fraudulently or illegally under the employment of freedom fighter scheme in the government service as per the Government circular dated 12th October, 1965.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)